

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

----- X
ONY, Inc., :
 :
 Plaintiff, :
 :
 -against- :
 :
 Cornerstone Therapeutics, Inc., et al., :
 :
 Defendants. :
----- X

Case No. 11-cv-1027-WMS

SUPPLEMENTAL DECLARATION OF FRANK R. ERNST

STATE OF NORTH CAROLINA)
) ss:
COUNTY OF MECKLENBURG)

I, FRANK R. ERNST, declare as follows:

1. The following facts are personally known to me.
2. In 2011, I had communications with representatives of Nature Publishing Group (“Nature”) regarding the publication of the article *Mortality in preterm infants with respiratory distress syndrome treated with poractant alfa, calfactant or beractant: a retrospective study*, which I co-authored with Drs. Ramanathan, Bhatia and Sekar. These communications related to our submission of the article for publication in the *Journal of Perinatology*.
3. All of my contacts with Nature were made by telephone, email, fax and Nature’s website while I was physically located in North Carolina. I never visited New York for the purpose of meeting with any representative of Nature.
4. I submitted a manuscript of the article to Nature by creating a free account on its website and uploading the manuscript to Nature’s website. I did all of this through my computer in North Carolina.

5. In connection with my submission of the article to Nature, I executed Nature's "License to Publish" form. I signed this form in North Carolina and sent it by fax to Nature. I conducted no negotiations with Nature over the terms of the License to Publish, but rather signed its standard form agreement.

6. I did not make any payment to Nature for its publication of the article.

7. My agreement with Nature related only to the publication of the article and did not create any ongoing contractual relationship between Nature and me. In receiving and agreeing to publish the article, Nature did not undertake to supervise me in any way.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2012.


Frank R. Ernst